

Federal Court



Cour fédérale

Date: 20220317

Docket: IMM-2397-20

Citation: 2022 FC 351

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 17, 2022

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

YASSINE ATMANI

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Yassine Atmani is seeking judicial review of the decision rendered on March 3, 2020, by the delegate of the Minister of Public Safety and Emergency Preparedness [the Minister's Delegate] to issue an exclusion order against Mr. Atmani under section 228 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[2] In her decision, the Minister's Delegate stated that she was satisfied, on a balance of probabilities, that Mr. Atmani was an inadmissible foreign national within the meaning of section 41 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] on grounds of failing to meet the requirements of paragraph 20(1)(a) of the Act and section 8 of the Regulations.

[3] For the reasons set out below, the application for judicial review will be dismissed.

II. Background

[4] Mr. Atmani is a citizen of Morocco. On July 25, 2018, he obtained a multiple-entry temporary resident visa (study) from Canadian authorities. On August 11, 2018, upon arriving in Canada, he obtained a study permit . He changed his program of study shortly after arriving and obtained a new study permit to reflect this change. The new program of study required students to complete a business co-op placement.

[5] From January 6, 2020, to February 16, 2020, Mr. Atmani completed his co-op placement and on February 18, 2020, Mr. Atmani obtained a certificate of successful completion of his vocational studies program. However, Mr. Atmani completed his co-op placement without first applying for the obligatory work permit, despite knowing that this work permit was required.

[6] On March 3, 2020, while his passport, multiple-entry temporary resident visa and study permit were still valid, Mr. Atmani left Canada, appeared before the American authorities and then immediately returned to the Canadian port of entry (a procedure known as "flagpoling") to

present an application for a “post-graduation” work permit. Mr. Atmani was accompanied by Mr. ET Talbi, who also applied for a post-graduation work permit. Mr. Atmani’s and Mr. ET Talbi’s applications for judicial review (IMM-2397-20 and IMM-2395-20 respectively) have not been consolidated, but they were heard together, and a separate decision has been rendered in each file.

[7] While his work permit application was processed by a Canada Border Services Agency officer at the port of entry in Lacolle [the Officer], Mr. Atmani informed the Officer that he had completed his co-op placement in Canada without holding the requisite work permit.

[8] On March 3, 2020, the Officer invoked paragraph 200(3)(e) of the Regulations and refused to issue a work permit to Mr. Atmani on the grounds that he had worked in Canada without an authorization or permit. The Officer noted in particular that Mr. Atmani’s last day of work was February 16, 2020, and that, according to paragraph 200(3)(e) of the Regulations, a work permit could not be issued to Mr. Atmani until August 16, 2020.

[9] Still on March 3, 2020, after refusing to issue the work permit, the Officer prepared a report pursuant to subsection 44(1) of the Act and designated Mr. Atmani as a foreign national who was not authorized to enter Canada and who was inadmissible under section 41 of the Act for failing to meet the requirements of paragraph 20(1)(b) of the Act and section 8 of the Regulations. The Officer reported that Mr. Atmani had been denied a post-graduation work permit and that he was seeking to enter Canada as a worker without first having obtained a work permit.

[10] Still on March 3, 2020, the Minister's Delegate received the report prepared by the Officer. Among other things, she noted that Mr. Atmani (1) had been denied the work permit he was seeking; (2) intended to work in Canada; (3) intended to establish himself in Canada; (4) did not have the financial resources to meet his needs in Canada without working; (5) was not taking responsibility for his actions; and (6) admitted that he had been aware of the statutory requirements governing the need to hold a work permit.

[11] The Minister's Delegate concluded, on a balance of probabilities, that the risk that Mr. Atmani would again work in Canada illegally outweighed the evidence that he would comply with Canadian laws. The Minister's Delegate issued an exclusion order, without referring the matter to the Immigration Division, citing subparagraph 228(1)(c)(iii) of the Regulations and in light of the inadmissibility declared on the basis of section 41 of the Act for failing to meet the requirements of paragraph 20(1)(b) of the Act and section 8 of the Regulations.

III. Position of the parties

[12] Mr. Atmani is not challenging the Officer's decision, based on paragraph 200(3)(e) of the Regulations, to refuse to issue him a work permit. He is only challenging the decision by the Minister's Delegate to issue an exclusion order against him.

[13] Mr. Atmani argues that the decision by the Minister's Delegate was unreasonable because (1) she based her reasoning solely on Mr. Atmani's past conduct and not on his future plans, contrary to the case law (*Cox v Canada (Citizenship and Immigration)*, 2019 FC 1414; (2) the

fact that Mr. Atmani left the country wiped out his non-compliance with the Act and the Regulations (Citizenship and Immigration Canada Manual; *Paranych v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 158; and (3) she lacked the authority to issue an exclusion order (*Yang v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 158).

[14] The Minister responds that the decision was reasonable because

(1) subparagraph 200(3)(e)(i) of the Regulations states that an officer shall not issue a work permit to a foreign national who has engaged in unauthorized work in Canada unless a period of six months has elapsed; (2) Mr. Atmani's work permit was refused and the refusal has not been challenged; (3) the factors considered by the Minister's Delegate take into account Mr. Atmani's past conduct, but also the present and future, namely the risk that the latter will work illegally in Canada in the future; (4) Mr. Atmani's circumstances differ from those in the cases on which he relies; and (5) the Minister's Delegate was fully authorized to issue the exclusion order under subparagraph 228(1)(b)(iii) of the Regulations.

IV. Decision

[15] I agree with the parties that the decision of the Minister's Delegate is reviewable on a standard of reasonableness. On this standard of review, the applicant must demonstrate the unreasonableness of the decision of the Minister's Delegate. A reasonable decision is one that is justified, transparent and intelligible and is justified in relation to the relevant legal and factual constraints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[16] First of all, I note that the facts of this case differ from those described in the case law cited by Mr. Atmani, given that in this case, the exclusion did not arise from the fact that Mr. Atmani had engaged in unauthorized work in Canada. The fact that Mr. Atmani had engaged in unauthorized work was instead sanctioned by the refusal to issue him a work permit on the basis of subparagraph 200(3)(e)(i) of the Regulations, which states that an officer shall not issue a work permit to a foreign national who has engaged in unauthorized work in Canada unless a period of six months has elapsed since the cessation of the unauthorized work. As mentioned previously, Mr. Atmani is not challenging the decision to refuse his work permit.

[17] Therefore, the exclusion issued against Mr. Atmani under section 41 of the Act resulted not from the fact that he had engaged in unauthorized work in Canada in the past, but rather from the fact that he wished to enter Canada to work when his application for a work permit had been refused, and thus he obviously did not have the documentation required by the Act.

[18] Mr. Atmani has not persuaded me that it was unreasonable for the Minister's Delegate to confirm that this indeed constituted a failure to comply under section 41 of the Act, given that there was a contravention of the requirements set out in paragraph 20(1)(b) of the Act and section 8 of the Regulations.

[19] First, paragraph 20(1)(b) of the Act states, as an obligation on entry, that every foreign national who seeks to enter or remain in Canada must establish, to become a temporary resident, that they hold the visa or other document required under the Regulations. As soon as his

application for a work permit was refused, Mr. Atmani could no longer establish that he held the documents required for working in Canada.

[20] Next, section 8 of the Regulations, in a Division dedicated to documents required before entry into Canada, states that a foreign national may not enter Canada to work without first obtaining a work permit. As previously stated, Mr. Atmani did not obtain the work permit he was seeking. It was reasonable to conclude that he intended, after this refusal, to enter Canada to work without first obtaining a work permit.

[21] The notes in the file confirm that the Minister's Delegate did not issue an exclusion order against Mr. Atmani on the grounds that he had engaged in unauthorized work in the past. The notes confirm that the Minister's Delegate was not persuaded that Mr. Atmani would not work illegally in Canada in the future.

[22] A review of the file reveals that the Minister's Delegate considered, among other things, that Mr. Atmani had already worked illegally in Canada. However, this same review reveals that the Minister's Delegate mainly considered the facts that Mr. Atmani's application for a work permit had just been refused, that he wished to work and establish himself in Canada and that he had no means to provide for himself in Canada without working, and she concluded that it was therefore more likely than not that he would work illegally in the future.

[23] Finally, subparagraph 228(1)(b)(iii) of the Regulations clearly sets out the authority of the Minister's Delegate to issue the exclusion order without referring the matter to the Immigration Division in the circumstances.

[24] The decision of the Minister's Delegate was coherent, intelligible and transparent, and it was justified in light of the evidence in the record and the clear language of the relevant legislation and regulations.

JUDGMENT in IMM-2397-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Martine St-Louis”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

FEDERAL COURT IMM-2397-20

STYLE OF CAUSE: YASSINE ATMANI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC, VIA VIDEOCONFERENCE

DATE OF HEARING: MARCH 9, 2022

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: MARCH 17, 2022

APPEARANCES:

Benoit Besseret FOR THE APPLICANT

Zoé Richard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cabinet Me Hugues Langlais FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec